SIXTH DIVISION
December 27, 2013

No. 1-12-3509

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MATHEW RILEY, Plaintiff-Appellant, v. GARRY MCCARTHY, Superintendent of the Chicago Police Department, and THE POLICE BOARD OF THE CITY OF CHICAGO, Defendants-Appellees.	))))))))))	Appeal from the Circuit Court of Cook County. No. 12 CH 1980 Honorable Mary Anne Mason, Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

& 1 *Held*: Police board's administrative decision to discharge police officer for providing false information to investigators is affirmed, where that decision was not arbitrary, unreasonable or unrelated to the requirements of service.

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& 3Plaintiff-appellant, Mathew Riley, brought the instant action for administrative review against defendants-appellees, Garry McCarthy, superintendent of the Chicago police department (Superintendent), and The Police Board of the City of Chicago (the Board), seeking reversal of the Board's decision to discharge him from the Chicago police department. The circuit court confirmed the Board's decision, and plaintiff has appealed. For the following reasons, we affirm

the circuit court and confirm the Board's decision.

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& 6 I. BACKGROUND

& 7On August 11, 2005, plaintiff—a police officer employed by the Chicago police department—was provided with written notice that allegations of improper conduct had been made against him by Miguel Melesio. In general, plaintiff was notified that Mr. Melesio alleged that, on August 11, 2004, plaintiff had participated in: (1) an unlawful traffic stop of Mr. Melesio's vehicle; (2) the unlawful detention and transportation of Mr. Melesio to his residence, (3) the illegal search of three apartments and a detached garage located at the building in which Mr. Melesio resided; and (4) the removal of $13,000 in United States currency from two of the apartments, with that currency not being properly inventoried or returned to its owner. As part of the investigation into Mr. Melesio's allegations, plaintiff was interviewed by the Chicago police department's Internal Affairs Division (IAD) investigator, Officer Jose Diaz. Plaintiff was informed of the charges against him and of his right to counsel prior to this interview, and plaintiff was in fact represented by counsel during his questioning.

& 8During that interview, and after he had been informed that any false statements could result in additional charges, plaintiff acknowledged that he participated in the August 11, 2004, traffic stop. Plaintiff and his partner arrived on the scene as backup after Mr. Melesio's vehicle had been stopped for having tinted windows. During that stop, Mr. Melesio gave the police permission to search his vehicle. A hidden compartment was found and an odor of cocaine was detected. While no drugs or drug paraphernalia were discovered in the vehicle, the police and Mr. Melesio proceeded to Mr. Melesio's residence where plaintiff believed there was a possibility that weapons or narcotics could be located.

& 9Plaintiff further stated that Mr. Melesio accompanied a number of other officers and let them

inside as they searched the building containing his residence. That search was conducted pursuant to verbal consent Mr. Melesio gave to the other officers. During this search, plaintiff stayed outside for "security." Plaintiff stated that he was accompanied by his immediate supervisor, Sergeant Dustin Roscoe, who plaintiff further indicated had been present during the initial traffic stop and remained on the scene until all the other officers had left. Plaintiff denied any knowledge as to whether any money was taken from the building containing Mr. Melesio's residence. Mr. Melesio was never charged with any criminal offense or traffic violations.

& 10 On October 15, 2009, plaintiff was questioned again by an IAD investigator in response to an allegation that he had provided false statements during his first IAD interview. In the second IAD interview, plaintiff admitted that he had in fact provided a number of false statements during the prior interview. He specifically acknowledged that his prior false statements included falsely indicating that Sergeant Roscoe was present during the traffic stop of Mr. Melesio's vehicle and search of the building containing Mr. Melesio's residence. He also acknowledged falsely indicating that Mr. Melesio had accompanied the other officers as they searched the residence, admitting that plaintiff had actually remained outside with Mr. Melesio while the search was completed.

& 11In addition to answering the IAD investigator's questions during the second interview, plaintiff also submitted a prepared written statement. Therein, plaintiff asserted that he was under "severe distress and anguish" when he made his original statement to the IAD. Plaintiff contended that he only provided the prior false statements after he was specifically directed to do so by Sergeant Roscoe, in the presence of his other supervisor, Lieutenant Jake Blake, and only after arguing "vehemently" against doing so. Plaintiff said that he ultimately succumbed to "peer

pressure," due in large part to the fact that other officers had already provided a fabricated story to the IAD and because plaintiff "felt compelled to go along with the fabricated version of events for fear of being retaliated against, ostracized, and alienated by my supervisors and fellow officers. I also feared removal from the Special Operations Section and S.W.A.T. units for failing to comply with my supervisor's [*sic*] orders."

& 12Finally, plaintiff noted the "extensive training and experience in S.W.A.T." he had obtained, and the many awards, honorable mentions, and complementary letters he had received throughout his career. Plaintiff acknowledged that he had used poor judgment in this incident, and wrote that he "hop[ed] that this one incident will not outweigh all the good things that I have brought to this organization, and plan to bring in the future."

& 13On May 24, 2011, the Superintendent filed charges against plaintiff with the Board. The superintendent specifically charged plaintiff with six counts of violating Rule 14 of the Rules and Regulations of the Chicago police department, which prohibits Chicago police officers from "[m]aking a false report, written or oral." All six counts related to a number of allegedly false statements plaintiff had made during the initial IAD interview regarding the presence of Sergeant Roscoe at the scene of the traffic stop and the search of Mr. Melesio's residence, as well as plaintiff's statement that Mr. Melesio had accompanied the other officers as they searched the residence. The Superintendent recommended to the Board that, in light of these charges, plaintiff be "separated and discharged from the Chicago Police Department."

& 14 A hearing on the charges was held on multiple dates in late 2011. The Superintendent called a single witness, Detective Diaz, who had previously worked as an IAD investigator and who questioned plaintiff during the first IAD interview. Detective Diaz confirmed the responses

plaintiff had given during that interview. The Superintendent also entered into evidence written transcripts of plaintiff's first and second IAD interviews, as well as the written statement plaintiff had submitted in connection with the second interview.

& 15Plaintiff pleaded guilty to each of the six charges against him, and provided testimony to explain the reasoning behind the actions that he took in providing false statements to the IAD. Plaintiff reiterated that he only lied after being told to do so by Sergeant Roscoe and after Lieutenant Blake, although silent, entered the room and appeared to ratify Sergeant Roscoe's instruction through his silence. Plaintiff also testified that when, one year later, he learned that there was a criminal investigation into the incident involving Mr. Melesio, he immediately contacted the Cook County State's Attorney. Plaintiff testified that he informed the State's Attorney about his false statements, cooperated with the State's Attorney's investigation, and ultimately testified before a federal grand jury about the matter. Plaintiff maintained that he never knew anything about any possible criminal activity, but nevertheless took responsibility for his improper actions. Plaintiff stated again that he lied only because he was instructed to do so and was "under severe duress."

& 16Finally, plaintiff introduced evidence of a number of specialized training certificates and the numerous awards, honorable mentions, and complementary letters he had received throughout his career as a police officer. In addition, plaintiff also introduced testimony and written statements from a number of current and former members of the Chicago police department, all of whom testified positively regarding plaintiff's character and his prior work with the department.

& 17The Board issued its final administrative decision on December 8, 2011. The Board first

acknowledged that plaintiff had pleaded guilty to the six charges against him. The Board then acknowledged that: (1) other than providing false statements, plaintiff had not been charged with being involved in any illegal activity with respect to the incident involving Mr. Melesio, and it was assumed that plaintiff did not have any knowledge of such illegal activity, (2) plaintiff testified that he only lied at the behest of his supervisors, (3) plaintiff did ultimately admit to his false statements and cooperate with the investigation into this matter, and (4) plaintiff had an "extensive complementary history and lack of prior disciplinary history." However, the Board concluded that neither plaintiff's positive work history, his contrition, the fact that his supervisors may have told him to lie, nor his ultimate cooperation with the investigation into this matter sufficiently mitigated the seriousness of his actions. The Board thus found that plaintiff should be discharged from the Chicago police department, concluding:

> & 18 "The conduct of which the Board has found Riley guilty—intentional and pre-meditated lying to Internal Affairs during its investigation of allegations of illegal searches and theft of large amounts of cash—is the type of behavior that allows police corruption to flourish and go unpunished, and which seriously undermines public confidence in the Police Department. The Board finds that Riley's conduct is sufficiently serious to constitute a substantial shortcoming that renders his continuance in his office detrimental to the discipline and efficiency of the service of the Chicago Police Department, and is something which the law recognizes as good cause for his no longer occupying his office."[1]

& 19Plaintiff appealed the Board's decision by filing the instant action for administrative review in the circuit court.

[1] One member of the Board dissented, with respect to the penalty imposed only, finding that "a suspension is a more appropriate penalty in this case."

The circuit court confirmed the Board's decision in a written order entered on November 1, 2012. In that decision, the circuit court specifically rejected plaintiff's attempt to cite to similar cases in which officers were not discharged for violating Rule 14. The circuit court noted that this argument was not raised before the Board, and that plaintiff's request "that the court consider other Board decisions not included in the record runs afoul of the well-established rule that review of administrative decisions is limited to issues raised in the administrative proceeding." Plaintiff, thereafter, filed a timely appeal from the circuit court's ruling.

& 20 II. ANALYSIS

& 21On appeal, Plaintiff presents a number of arguments as to why his discharge from the Chicago police department should be reversed and this matter should be remanded to the Board for further proceedings. We address each argument in turn, after laying out the legal framework that will guide our analysis.

& 22 A. Legal Framework and Standard of Review

& 23Our review of the Board's final administrative decision is governed by the Administrative Review Law. 735 ILCS 5/3-101 *et seq*. (West 2010); 65 ILCS 5/10-1-45 (West 2010). "In administrative cases, our role is to review the decision of the administrative agency, not the determination of the circuit court." *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006).

& 24"Appellate review of an administrative agency's discharge decision requires a two-stage analysis: a determination of whether the agency's factual findings are contrary to the manifest weight of the evidence and a determination of whether those findings provide a sufficient basis for the agency's conclusion that cause for termination does or does not exist." *Siwek v. Police Bd. of City of Chicago*, 374 Ill. App. 3d 735, 737 (2007). However, plaintiff pleaded guilty to the charges against him and has specifically disclaimed any challenge to the Board's findings of fact. We may therefore focus solely on the second stage of the analysis; *i.e.*, whether the Board's factual findings sufficiently justified its decision to discharge plaintiff from the Chicago police department. *Id*.

& 25 Pursuant to the Illinois Municipal Code, plaintiff could not be "removed or discharged *** except *for cause* upon written charges and after an opportunity to be heard in his own defense by the Police Board." (Emphasis added.) 65 ILCS 5/10-1-18.1 (West 2010). "Illinois courts have defined 'cause' for discharge as some 'substantial shortcoming which renders the employee's continuance in office in some way detrimental to the discipline and

efficiency of the service and which the law and sound public opinion recognize as good cause for his no longer holding the position.' " *Rodriguez v. Weis*, 408 Ill. App. 3d 663, 671 (2011) (quoting *Collins v. Board of Fire & Police Com'rs of City of Genoa*, 84 Ill. App. 3d 516, 521 (1980); see also, *Ehlers v. Jackson County Sheriff's Merit Comm'n*, 183 Ill. 2d 83, 89 (1998) (same).

& 26"The Board has considerable latitude and discretion in determining what constitutes cause for discharge." *Rodriguez*, 408 Ill. App. 3d at 671. "[B]ecause the Board 'is in the best position to determine the effect of an officer's conduct on the department, the reviewing court is required to give the Board's determination of cause for terminating an officer considerable deference.' " *Id*. (quoting *Sangirardi v. Village of Stickney*, 342 Ill. App. 3d 1, 18 (2003)). "Thus, 'the agency's decision as to cause will not be reversed unless it is arbitrary, unreasonable, or unrelated to the requirements of service.' " *Krocka v. Police Bd. of City of Chicago*, 327 Ill. App. 3d 36, 46 (2001) (quoting *Department of Mental Health & Developmental Disabilities v. Civil Service Comm'n*, 85 Ill. 2d 547, 552 (1981)).

& 27 B. Grounds for Discharge

& 28Plaintiff first contends that the Board's decision to discharge him for lying to the IAD was not supported by sufficient cause and was therefore arbitrary and unreasonable. Plaintiff asserts that because he "lied at the direction of his supervisors and without knowledge of the underlying criminal conduct, he was simply terminated for lying to an investigative agency."

& 29 However, "[t]rustworthiness, reliability, good judgment, and integrity are all material qualifications for any job, particularly one as a police officer." *Village of Oak Lawn v. Human Rights Comm'n*, 133 Ill.App.3d 221, 224 (1985). "[A]s the guardians of our laws, police officers are expected to act with integrity, honesty, and trustworthiness." *Sindermann v. Civil Service Comm'n*, 275 Ill.App.3d 917, 928 (1995). Indeed, it is well recognized that " '[a]police officer's credibility is inevitably an issue in the prosecution of crimes and in the Chicago police department's defense of civil lawsuits. A public finding that an officer had lied on previous occasions is detrimental to the officer's credibility as a witness and as such may be a serious liability to the department.' " *Taylor v. Police Bd. of City of Chicago*, 2011 IL App (1st) 101156, ¶ 51 (quoting *Rodriguez*, 408 Ill.App.3d at 671).

& 30Here, plaintiff pleaded guilty to six counts of violating Rule 14 of the Rules and Regulations of the Chicago

police department, which explicitly prohibits Chicago police officers from "[m]aking a false report, written or oral." "Illinois courts have recognized that police departments, as paramilitary organizations, require disciplined officers to function effectively, and have accordingly held that the promotion of discipline through sanctions for disobedience of rules, regulations and orders is neither inappropriate nor unrelated to the needs of a police force." *Siwek*, 374 Ill. App. 3d at 738. "An officer's violation of a single rule has long been held to be a sufficient basis for termination." *Id*. at 738 (collecting cases). Moreover, courts have repeatedly recognized that cause for discharge exists where a police officer had lied to his employer or filed a false report. *Sindermann*, 275 Ill.App.3d at 928-29; *Nelmark v. Board of Fire and Police Com'rs of City of DeKalb*, 159 Ill.App.3d 751, 759 (1987).

& 31There is no question that plaintiff provided false information to the IAD investigator in violation of Rule 14. That conduct alone compromised his integrity and credibility, was incompatible with his continued service as a police officer, and therefore sufficiently justified the Board's decision to discharge him from the Chicago police department. We therefore reject plaintiff's argument that the Board's decision to discharge him was arbitrary, unreasonable, or unrelated to the requirements of service. *Krocka*, 327 Ill. App. 3d at 46.

& 32 C. Surrounding Circumstances

& 33Plaintiff next contends that the Board discharged him from the Chicago police department only after improperly failing to consider mitigating circumstances surrounding the falsehoods he told to the IAD investigator. Specifically, plaintiff asserts that the Board failed to consider the fact that he lied only at the direction of his supervisors and that he subsequently contacted authorities and cooperated with them by providing testimony to the IAD, the State's Attorney, and the federal grand jury. We disagree.

& 34First, the record clearly reflects that the Board did in fact consider these very circumstances. The Board's decision makes specific reference to plaintiff's testimony that it was his supervisors that instructed him to lie to the IAD investigator, but the Board ultimately concluded that "[s]uch pressure is not a valid excuse for Riley's conduct and does not mitigate its seriousness." The Board went on to note that "while Riley was in a very difficult situation, following this type of direction from supervisors is not justifiable." The Board also specifically referenced plaintiff's ultimate decision to admit to lying to investigators and his cooperation with the criminal investigation into Mr. Melesio's allegations. However, the Board concluded that "these acts likewise do not mitigate the seriousness of

[plaintiff's] conduct."

& 35Moreover, and as we noted above, "[t]he Board has considerable latitude and discretion in determining what constitutes cause for discharge." *Rodriguez*, 408 Ill. App. 3d at 671. Furthermore, the law is clear that "[a]n administrative agency need not give mitigating evidence sufficient weight to overcome a termination decision, and a discharge decision made despite the presentation of such evidence is not, without more, arbitrary or otherwise erroneous." *Siwek*, 374 Ill. App. 3d at 738-39; *Cruz v. Cook County Sheriff's Merit Bd.*, 394 Ill. App. 3d 337, 342 (2009) (same). As our supreme court has made clear, the question before us " 'is not whether this court would decide upon a more lenient sanction than discharge were it to determine initially what discipline would be appropriate. Nor is it whether this court would conclude in view of the mitigating circumstances * * * that a different penalty would be more appropriate. The question is whether, in view of the circumstances presented, this court can say that the [board], in opting for discharge, acted unreasonably or arbitrarily or selected a type of discipline unrelated to the needs of the service.' " *Launius v. Board of Fire & Police Com'rs of City of DesPlaines*, 151 Ill. 2d 419, 436 (1992) (quoting *Sutton v. Civil Service Comm'n*, 91 Ill. 2d 404, 411 (1982)).

& 36Plaintiff's arguments on this point essentially ask this court to substitute our judgment for that of the Board on the question of whether the mitigating circumstances presented below justified some sanction other than plaintiff's discharge. Yet, this is exactly the exercise that we are not permitted to undertake. Rather, we must simply ensure that—in light of all the circumstances presented—the Board's decision to discharge plaintiff was not unreasonable, arbitrary, or a type of sanction unrelated to the needs of the Chicago police department. *Id*. We conclude that the Board's decision to discharge plaintiff satisfied this standard.

& 37 D. Comparison to Other Cases

& 38Finally, plaintiff contends that the circuit court erred in failing to allow him to argue that his discharge was arbitrary and unreasonable in light of the type of sanctions imposed in other cases presenting similar facts. We must again disagree.

& 39First, we note again that "[i]n administrative cases, our role is to review the decision of the administrative agency, not the determination of the circuit court." *Marconi*, 225 Ill. 2d at 531. Thus, any possible errors in the circuit court's analysis are irrelevant to our review of the propriety of *the Board's* decision.

& 40Second, we note that it is has been "quite established that if an argument, issue, or defense is not presented in an administrative hearing, it is procedurally defaulted and may not be raised for the first time before the circuit court on administrative review." *Cinkus v. Village of Stickney Municipal Officers Electoral Bd.*, 228 Ill. 2d 200, 212 (2008). Here, it is undisputed that plaintiff did not present the cases he sought to cite to the circuit court before the Board, and he therefore was properly precluded from arguing the relevance of those cases to the circuit court.

& 41Third, plaintiff's attempt to compare the sanction imposed upon him to sanctions imposed in other cases is not proper. The "fact that different individuals have been disciplined differently is not a basis for concluding that an agency's disciplinary decision is unreasonable; such conclusions are appropriate when individuals receive different discipline in a single, identical, 'completely related' case." *Siwek*, 374 Ill. App. 3d at 738 (quoting *Launius*, 151 Ill. 2d at 441-42). Thus, "cause for discharge can be found regardless of whether other employees have been disciplined differently." *Launius*, 151 Ill. 2d at 442. Here, none of the comparison cases cited by plaintiff involve situations that are identical to or " 'completely related' " to the matter at hand (*id.*), and they are therefore irrelevant to our consideration of his appeal.

& 42 III. CONCLUSION

& 43For the foregoing reasons, we affirm the circuit court's confirmation of the Board's decision.

& 44Circuit court affirmed; Board's decision confirmed.